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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 NORTHERN CALIFORNIA-NORTHERN
NEVADA SOUND AND COMMUNICATIONS }
11 EMPLOYEE BENEFIT TRUST FUNDS; }
DOUG LUNG AND BOB TRAGNI AS }
12 TRUSTEES OF THE NORTHERN }
CALIFORNIA-NORTHERN NEVADA }
13 SOUND AND COMMUNICATIONS }
DISTRICT NO. 9 HEALTH AND WELFARE }
14 TRUST FUND,

15 Plaintiffs,

16 vs.

17 SPARTAN ENGINEERING, INC.,
a California Corporation,

18 Defendant.
19
20

CASE NO.: C08-00537 RMW

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF A DEFAULT
JUDGMENT BY COURT AND
FOR ATTORNEY'S FEES

DATE: July 25, 2008
TIME: 9:00 a.m.
PLACE: Courtroom 4, 5th Floor
JUDGE: Ronald M. Whyte

21 Pursuant to Federal Rules of Civil Procedure, Rule 55(b)(2), a judgment by
22 default may be entered by the Court upon application of Plaintiff. Judgment by the Court must
23 be made for any amounts that is not a sum certain or for a sum of which computation can be
24 made. Plaintiffs in this matter have requested contributions of \$21,121.57; \$11,256.52 in
25 liquidated damages; \$3,342.60 in interest; costs of \$390.00; and attorney's fees of \$6,454.50
26 (Declaration of Sue Campbell) pursuant to contract and federal law, 29 U.S.C. §1132(g)(2).

27 This is an action for employee benefits due under the Employee Retirement
28 Income Security Act of 1974. Pursuant to that Act, attorney's fees, interest and liquidated

1 damages are allowed as follows:

2 "(2) In any action under this title by a fiduciary for or on behalf of a plan to
3 enforce section 515 in which a judgment in favor of the plan is awarded, the court
shall award the plan -

4 "(A) the unpaid contributions,

5 "(B) interest on the unpaid contributions,

6 "(C) an amount equal to the greater of -

7 "(i) interest on the unpaid contributions, or

8 "(ii) liquidated damages provided for under the plan in an amount
9 not in excess of 20 percent (or such higher percentage as may be
permitted under Federal or State law) of the amount determined by
the court under subparagraph (A),

10 "(D) reasonable attorney's fees and costs of the action, to be paid by the
11 defendant, and

12 "(E) such other legal or equitable relief as the court deems appropriate. For
13 purposes of this paragraph, interest on unpaid contributions shall be determined
14 by using the rate provided under the plan, or, if none, the rate prescribed under
section 6621 of the Internal Revenue Code of 1954." 29 U.S.C. 1132(g)(2)
(1982).

15 The declaration of plaintiffs' attorney, Sue Campbell, filed herewith, sets forth the
16 calculations for attorney's fees in the amount of \$6,454.50. As the above mentioned statute
17 allows the plaintiff to obtain reasonable attorney's fees in any action brought under E.R.I.S.A.,
18 Plaintiffs' attorney's fees should be allowed in full.

19 Pursuant to the collective bargaining agreement, liquidated damages of 10% of the
20 amount owed are due for August 2007 through January 2008 delinquent fringe benefits. The
21 Trust documents require a payment of 10% liquidated damages. The Trust Funds have charged
22 liquidated damages at 10%. A copy of the pertinent sections of the Trust documents are
23 attached to the declaration of Sue Campbell.

24 In approximately January 2002, the Trust Funds conducted a study to determine the
25 reasonableness of liquidated damages charged by the Trust Funds. The Trust Funds also
26 periodically review their collection procedures and costs to determine if the ten percent
27 liquidated damages being charged is reasonable. A true and correct copy of that study, as well
28 as a copy of the collection procedures, is attached to the declaration of Sue Campbell. Both of

1 these documents are incorporated by reference as evidence of the reasonableness of the
2 liquidated damages requested. The final collection document was prepared and presented by
3 my office and is a true and correct copy of that study.

4 Plaintiffs have complied with all the requirements of Rule 55(b)(2), including the
5 requirement that a defendant be given three days notice of the application to enter the default
6 judgment. Federal Rules Civil Procedure, Rule 55(b)(2).

7
8 Date: June 19, 2008

/s/ Sue Campbell

SUE CAMPBELL
Attorney for Plaintiffs